THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.20819 OF 1997

Between:

M.D.Shaik Sattar and others

… Petitioners

And :

The District Educational officer,
Kakinada, E.G.District and others

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.20819 OF 1997

ORAL ORDER :

The ten petitioners challenge the Circular Memo dated 08.07.1997 issued by the 4th respondent whereby it is declared that the drawal of House Rent Allowance (HRA) and City Compensatory Allowance (CCA) by the employees working in the specified offices in East Godawari District on par with employees residing in Kakinada and Rajahmundry towns, is irregular and must be recovered. Among the offices specified in the impugned memo are the respondents 2 and 3 offices, whereat the petitioners are employed, in Samalkota town.

In the 1979 pay revision, the Pay Revision Commission recommended and the Government accepted that Government servants whose place of residence is in proximity of a specified city or town and who necessarily have to reside within the city or municipal limits of the town, may be granted HRA provided the

distance between the town and the periphery of the municipal limits of a qualified city does not exceed 8 Km. As per the orders in G.O.(P) No. 139 F&P (F.W. PRC.I) Department, dated 17.9.1979 the above orders were extended to all categories of personnel including teaching and non-teaching staff of aided schools and colleges. In a memo No. 320/130PRC.I/80-1, dated 30.5.1980 the Principal Secretary to the Government, Finance & Planning Department, had ordered that the appropriate authority to declare whether a particular place is situated outside the municipal limits of a town or is within 8 Km of the periphery of the qualified city or town, is the Executive Engineer, R&B Division concerned. In G.O.Ms.No. 354 F7P (FW PRC 1) Department, dated 17.12.1980, the State Government issued an amendment to G.O.(P) No. 239. As per this amendment, employees whose place of duty is in villages or towns whose revenue limits are within a distance of 8 Km from the municipality limits of the qualified town, are entitled to HRA at the same rate as applicable to employees working in offices situated in the notified town. The orders in G.O.Ms.No. 354 are specified to come into force w.e.f. 01.09.1979.

At the request of the APNGOs Association, E.G.District, the Executive Engineer, R&B Division, Kakinada, by letter dated 29.3.1984 certified that the distance between Kakainada Municipal Periphery (notified town) and Samalkota Municipal Periphery is within 8 Km.

However by a circular memo dated 8.7.1997 (impugned herein) the 4th respondent directed recovery of the irregularly paid HRA and CCA in respect of employees working in specified institutions. This memo would impact the petitioners.

The petitioners claim that as per the A.P Public Employment (HRA) Rules 1988 the Executive Engineer of the

R&B Division concerned is the competent authority to certify the distance between the periphery of a village or town and the notified town for the purpose of seeking eligibility to HRA under G.O.(P) No. 239. The petitioners also contend that as the Executive Engineer, R& B Division, Kakinada, had issued a certificate dated 29.3.1984 certifying the petitioners' residence at Samalkota to be within the periphery of 8 Km, of Kakinada (a notified town), the petitioners were rightly granted and have drawn the HRA and CCA and as such these cannot now be recovered. The petitioners also plead that no notice or opportunity was afforded to them before directing withdrawal of these benefits by the impugned order.

Thought the petitioners have specifically pleaded that the impugned order is passed without notice or opportunity to them, the counter is conveniently silent on this issue. The counter does not rebut the specific contention by the petitioners in ground-2 that the petitioners were not put on a notice before a decision was taken to direct recovery. According to the respondents, the District Collector, E.G.District, had issued a Gazette notification on 11.3.1997 pursuant to orders in G.O.(P) No. 225, dated 29.5.1993 declaring the towns or villages which are within the periphery of 8 km from Kakinada and Rajahmundry towns. Samalkota (where the petitioners reside) is not within 8 km, periphery from Kakinada. There is thus a conflict between the certificate issued by the Executive Engineer, R&B Division, Kakinada and the Gazette notification asserted to have been issued by the District Collector. Whether the notification issued by the District Collector is valid and operational having regard to the provisions of Rule 2(2)(ii) of the A.P Public Employment (HRA) Rules 1988, is also not clear. Greater clarity would be possible only when the petitioners are

issued notices proposing recovery of the amounts and affording them an opportunity to respond. The notice to be issued must set out the facts and circumstances in which the recovery is being ordered. Once such notice is issued, the petitioners will point out why according to them no recovery could be made. These objections may include legal objections as to the District Collector's competence to issue a notification such as the one dated 11.3.1997. In any event the order of recovery cannot be passed without affording an opportunity to the petitioners.

For the aforesaid reasons the writ petition is allowed to the extent of directing the respondents not to effect recovery from the petitioners without affording them a notice and opportunity to respond to a proposal for recovery. On receipt of objections of the petitioners, if any, the respondents are at liberty to pass final orders directing recovery, if such be the decision. Till then no recovery shall be effected.

The writ petition is disposed of as above. No order as to costs.

Dated: 21.03.2007 ----------

Pvsn/Tsnr Justice G.Raghuram